Supreme Court, U.S.
FILED
APR 30 1993
OFFICE OF THE CLERK

No. 92-1601

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

UNITED STATES OF AMERICA *ex rel.*
ROLAND A. LeBLANC

Petitioner,

v.

RAYTHEON COMPANY

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

RICHARD A. SAUBER
Counsel of Record
KENNETH S. KRAMER, P.C.
DOUGLAS W. BARUCH
MAUREEN C. SHAY
FRIED, FRANK, HARRIS,
SHRIVER & JACOBSON
(A Partnership Which Includes
Professional Corporations)
1001 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20004
(202) 639-7000

Counsel for Respondent
Raytheon Company

Balmar Legal Publishing Services, Washington, D.C., (202)682-9800

QUESTION PRESENTED

Whether the decision in *United States ex rel. LeBlanc v. Raytheon Co.*, 913 F.2d 17 (1st Cir. 1990), operates as a bar to the instant complaint under the principles of *res judicata* and collateral estoppel.

RULE 29.1 LISTING

Pursuant to Supreme Court Rule 29.1, Raytheon Company ("Raytheon") hereby advises the Court that its shares are publicly traded. Raytheon currently has no parent corporation, nor does it have any subsidiaries which have issued shares to the public. Raytheon has taken investment positions in three companies which have issued shares to the public: Beta Phase, Inc., PerSeptive Biosystems, Inc., and New Japan Radio Co., Ltd. (the latter has shares traded on the Tokyo Exchange).

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
RULE 29.1 LISTING	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
JURISDICTION	1
STATEMENT OF THE CASE	2
ARGUMENT	6
I. THE ONLY ISSUE BEFORE THE COURT IS WHETHER LEBLANC'S COMPLAINT WAS PROPERLY DISMISSED BASED ON THE DOCTRINES OF RES JUDICATA AND COLLATERAL ESTOPPEL	6
II. THE CASE PRESENTS NO CONFLICT AMONG THE CIRCUITS	8
III. THE CASE PRESENTS NO IMPORTANT OR SUBSTANTIAL QUESTION OF FEDERAL LAW	8
IV. DENIAL OF THE PETITION WOULD DISCOURAGE FORUM SHOPPING	9
V. OVERTURNING THE FIRST CIRCUIT DECISION WOULD UPSET THE FINALITY OF ALL FEDERAL DECISIONS	10
VI. THE DECISIONS AND PROCEEDINGS BELOW WERE ACCURATE AND FAIR	11
CONCLUSION	13

TABLE OF AUTHORITIES

Cases	Page
Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970)	6
American Surety Co. v. Baldwin, 287 U.S. 156 (1932)	11
Brown v. Felsen, 442 U.S. 127 (1979)	11
Cheeseman v. Carey, 485 F. Supp. 203 (S.D.N.Y. 1980)	9
Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371 (1940)	12
Concordia v. Bendekovic, 693 F.2d 1073 (11th Cir. 1982)	11
Delta Air Lines, Inc. v. August, 450 U.S. 346 (1981)	6
Diaz-Buxo v. Trias Monge, 593 F.2d 153 (1st Cir.), *cert. denied*, 444 U.S. 833 (1979)	11
Dowd v. Soc'y of St. Columbans, 861 F.2d 761 (1st Cir. 1988)	10
Durfee v. Duke, 375 U.S. 106 (1963)	12
EEOC v. Federal Labor Relations Authority, 476 U.S. 19 (1986)	6
Hadge v. Second Fed. Sav. & Loan Ass'n of Boston, 409 F.2d 1254 (1st Cir. 1969)	11
In Re Korean Air Lines Disaster 829 F.2d 1171 (D.C. Cir. 1987)	9
LeBlanc v. United States, 111 S. Ct. 1312 (1991)	4

LeBlanc v. United States,
112 S. Ct. 17 (1991) 4

Montana v. United States,
440 U.S. 147 (1979) 10, 12

Piper Aircraft v. Reyno, 454
U.S. 235 (1981) 9

Precision Air Parts, Inc. v. Avco Corp.,
736 F.2d 1499 (11th Cir. 1984), *cert. denied*,
469 U.S. 1191 (1985) 8, 12

Schmid Laboratories Inc. v. Hartford Acc. & Indem. Co., 654 F. Supp. 734 (D.D.C. 1986) 9

Underwriters Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n, 455 U.S. 691 (1982) 11

United States v. Moser, 266 U.S. 236 (1924) 12

United States ex rel. LeBlanc v. Raytheon Co.,
729 F. Supp. 170 (D. Mass. 1990) 3

United States ex rel. LeBlanc v. Raytheon Co.,
913 F.2d 17 (1st Cir. 1990) 3

Statutes

28 U.S.C. § 1254(1) 2

28 U.S.C. § 1404(a) 4, 7, 9, 10

28 U.S.C. § 1631 7

31 U.S.C. § 3729 *et seq.* 2

31 U.S.C. § 3730(e)(4) 3, 7

Other Authorities

Fed. R. Civ. P. 12(b)(6) 4, 5, 11

Fed. R. Civ. P. 41(b) 7

No. 92-1601

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

UNITED STATES OF AMERICA *ex rel.*
ROLAND A. LeBLANC

Petitioner,

v.

RAYTHEON COMPANY

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Respondent Raytheon Company ("Raytheon") respectfully requests that this Court deny the petition for writ of certiorari seeking review of the judgment and opinion of the United States Court of Appeals for the First Circuit, entered in the above-entitled proceeding on December 29, 1992.

JURISDICTION

The First Circuit judgment affirmed the Massachusetts District Court's May 18, 1992 Order dismissing Petitioner's complaint on the basis of *res judicata* and collateral estoppel.

Pursuant to 28 U.S.C. § 1254(1), this Court has jurisdiction to review the First Circuit decision.[1]

STATEMENT OF THE CASE

This case does not present any issue for which Supreme Court review is necessary or warranted. Rather, the only relevant issue is the application of the well-settled doctrines of *res judicata* and collateral estoppel to the particular facts of this case. The same District Court which handled the previous action determined that the second action was barred by the doctrines of *res judicata* and collateral estoppel, based on the facts presented. The United States Court of Appeals for the First Circuit, including two members who had served on the panel affirming the first dismissal, quickly and decisively affirmed the second dismissal on *res judicata* grounds, awarding double costs to Raytheon.

Now, Petitioner Roland LeBlanc ("Petitioner" or "LeBlanc") boldly seeks to have this Court review the facts not only of this case, but the identical facts of the prior action as well, notwithstanding the fact that this Court previously dispensed with the prior action on two occasions. In fact, this Petition for Writ of Certiorari constitutes the third time Petitioner has sought Supreme Court review of the previously dismissed claims. On the first two occasions, the Court denied certiorari and a subsequent request to revisit the issue. The same result is dictated here, where Petitioner merely has repackaged the identical claims in a second complaint.

A. LeBlanc I

A brief review of Petitioner's efforts in his prior litigation demonstrates that Petitioner fully litigated his positions and that

---

[1] Although it is not an issue in this appeal, Raytheon has maintained throughout the proceedings below that, pursuant to the provisions of the False Claims Act, 31 U.S.C. § 3729, *et seq.*, neither the District of Massachusetts, nor any federal court, has subject matter jurisdiction over this action.

the only proper issue in the instant case is the preclusive effect of the prior action. Petitioner filed his first False Claims Act (or "*qui tam*") action, *United States ex rel. LeBlanc v. Raytheon Co.*, No. 88-2363-T (D. Mass.) ("*LeBlanc I*"), on October 21, 1988. On January 25, 1990, the District of Massachusetts, per Judge Tauro, ruled that section 3730(e)(4) bars *qui tam* actions, such as Petitioner's, based on information discovered in the course of government employment.[2] *United States ex rel. LeBlanc v. Raytheon Co.*, 729 F. Supp. 170 (D. Mass. 1990). On February 5, 1990, Petitioner specifically requested that Judge Tauro amend his ruling to dismiss the action, arguing that the Court's conclusion constituted a holding that the Court lacked statutory jurisdiction. Judge Tauro subsequently issued an Amended Order dismissing the complaint "because this *qui tam* suit is jurisdictionally barred by § 3730(e)(4) of the Federal False Claims Act, 31 U.S.C. § 3729 *et seq.*" *LeBlanc I*, 729 F. Supp. at 177-78.

Petitioner appealed and, on September 4, 1990, the First Circuit upheld the dismissal, stating that "a government employee in the same position as LeBlanc cannot qualify for the 'original source' exception to § 3730(e)(4)'s jurisdictional bar . . . ." *LeBlanc I*, 913 F.2d 17, 20 (1st Cir. 1990).

Petitioner filed his first petition for writ of certiorari in the United States Supreme Court on January 14, 1991, asking this Court to rule whether section 3730(e)(4) of the False Claims Act barred Petitioner's *qui tam* action against Raytheon based on knowledge he obtained in the course of his duties as a federal

---

[2] Petitioner based his allegations on observations he made while employed as a United States Defense Contract Administration Service ("DCAS") Quality Assurance inspector at a Raytheon facility in Massachusetts from November 1986 to November 1987. The United States declined to intervene in the lawsuit and litigated against Petitioner regarding the section 3730(e)(4) issue.

inspector. On March 18, 1991, the Supreme Court denied the petition. *LeBlanc v. United States*, 111 S. Ct. 1312 (1991).

On June 19, 1991, Petitioner sought leave to file a petition for rehearing in the Supreme Court. Petitioner argued that "intervening circumstances" justified the Supreme Court's reconsideration of its earlier denial of certiorari. The Supreme Court denied this request on August 17, 1991. *LeBlanc v. United States*, 112 S. Ct. 17 (1991)

B. LeBlanc II

On July 10, 1991, with his motion for rehearing still pending in the Supreme Court, Petitioner filed the instant Complaint ("*LeBlanc II*") in the United States District Court for the Middle District of Florida (Case No. 91-440-CIV-ORL-19). As determined by the District Court and affirmed by the Court of Appeals, the Complaint is identical in all material respects to the Complaint filed in *LeBlanc I*.[3] The United States declined to intervene in the action.

Raytheon moved to dismiss Petitioner's renewed action pursuant to Fed. R. Civ. P. 12(b)(6) on the grounds that his claims were barred by the doctrines of *res judicata* and collateral estoppel. In the alternative, Raytheon requested that the matter be transferred to the District of Massachusetts pursuant to 28 U.S.C. § 1404(a). Petitioner filed an opposition addressing both aspects of Raytheon's motion.

On April 21, 1992, the Middle District of Florida, per Judge Fawsett, granted Raytheon's motion to transfer, finding that "the connection between the subject matter of this lawsuit and the Middle District of Florida is virtually nonexistent" and criticizing Petitioner's "apparent attempt to manipulate the court system through forum shopping." Appendix to Petition ("App.") at

---

[3] On September 12, 1991, the United States filed a memorandum of points and authorities suggesting dismissal of *LeBlanc II* under the principle of *res judicata*. The court never ruled on this motion.

50, 54-55. Judge Fawsett transferred the entire case, including the pending Motion to Dismiss, to the District of Massachusetts.

On May 15, 1992, the District of Massachusetts dismissed the *LeBlanc II* complaint on the basis of *res judicata* and collateral estoppel. The Court compared the *LeBlanc I* complaint with the *LeBlanc II* complaint, finding that the second complaint, "though now of gigantic proportions, is identical in all material respects to the complaint filed in 1988 in the District of Massachusetts." App. at 59. The District Court held in relevant part:

> On the basis of this entire record, including the record of [*LeBlanc I*], the defendant's motion to dismiss is allowed and the complaint dismissed. . . . On this record the plaintiff is barred by principles of both res judicata and collateral estoppel. A final judgment was obtained in the first case; the case was decided by a court of competent jurisdiction; the parties are identical; the causes of action are identical; and the plaintiff has had a full and fair opportunity to present his claims to the district court and the court of appeals in this circuit.

App. at 62-63.

Petitioner again appealed to the First Circuit. The sole issue preserved on appeal was whether the District Court erred in dismissing the complaint under Rule 12(b)(6) on the basis of *res judicata* and collateral estoppel. After oral argument before Judge Torruella (author of the *LeBlanc I* First Circuit decision), Judge Bownes (member of the *LeBlanc I* panel), and Judge Stahl, the First Circuit, in a one paragraph *per curiam* decision, affirmed the dismissal on *res judicata* grounds and awarded double costs to Raytheon. App. at 69.

ARGUMENT

The Court should deny the petition for writ of certiorari for several reasons.

I. THE ONLY ISSUE BEFORE THE COURT IS WHETHER LEBLANC'S COMPLAINT WAS PROPERLY DISMISSED BASED ON THE DOCTRINES OF RES JUDICATA AND COLLATERAL ESTOPPEL

Petitioner virtually ignores the fact that the only issue in this case is the application of the well-settled doctrines of *res judicata* and collateral estoppel. Petitioner's discussion of these doctrines is relegated to the very end of his petition (Petition at 24) and Petitioner does not raise these issues at all in any of the "Questions Presented."[4] Yet, the *only* issue presented to the First Circuit for review and preserved for appeal is whether "this action [was] properly dismissed by the District Court on the basis of *res judicata* and collateral estoppel." Brief of Appellant (1st Cir. No. 92-1683) at 3. The remainder of the issues in LeBlanc's petition were not preserved on appeal and are not properly before the Court. The Court should therefore decline to address them. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970); *EEOC v. Federal Labor Relations Authority*, 476 U.S. 19, 24 (1986); *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 362 (1981)(question raised in petition for certiorari but not raised in the Court of Appeals was not properly before the Supreme Court and was not considered).

In addition to the new theories raised in the "Questions Presented," Petitioner presents several arguments which were never presented, briefed or argued in any proceeding below:

---

[4] Specifically, Petitioner framed his "Questions Presented" to include issues such as (1) the propriety of the dismissal of both *LeBlanc I* and *LeBlanc II*, (2) whether the First Circuit courts had jurisdiction over both *LeBlanc I* and *LeBlanc II*, and (3) whether both *LeBlanc I* and *LeBlanc II* should be transferred to a federal court in Florida. Petition at i.

(1) whether the *LeBlanc I* District Court erred in permitting the United States to file an opposition to Petitioner's motion to strike the United States reservation of certain rights in its Notice of Declination. Petition at 3-4;

(2) whether dismissal based on the finding that a complaint is "jurisdictionally barred" under 31 U.S.C. § 3730(e)(4) is a voluntary dismissal without prejudice under Fed. R. Civ. P. 41(b) (Petition at 11-12);[5]

(3) whether 28 U.S.C. § 1631 requires a federal court to transfer a case to another forum with more favorable substantive law whenever dismissal is warranted under its own interpretation of the same law (Petition at 12-14);

(4) whether a federal court is prohibited from dismissing any case transferred to it pursuant to 28 U.S.C. § 1404(a) (Petition at 14-16, 18-20);

(5) whether the federal courts have the power to dismiss a *qui tam* action without the Attorney General's approval (Petition at 16-17); and

(6) whether, after transfer of the case to the District of Massachusetts, the Court could act on a motion that was pending in the Middle District of Florida at the time of the transfer (Petition at 20-24).

Even if any of these arguments had merit — which they do not — they are irrelevant to the *res judicata* issue on appeal and, since they were not raised below, are not properly before the Court.

---

[5] Petitioner now claims that the *LeBlanc I* dismissal was voluntary and without prejudice, so that he may refile the action anywhere at any time. This new assertion is belied by the fact that Petitioner specifically asked the Court to issue a final order dismissing that action so that Petitioner could appeal the dismissal and in fact, Petitioner immediately appealed. Moreover, Petitioner could not have proceeded in another forum after the Court found that he was an improper plaintiff under the statute.

II. THE CASE PRESENTS NO CONFLICT AMONG THE CIRCUITS

Resolution of *LeBlanc II* required only a straight-forward application of *res judicata* and collateral estoppel. The District of Massachusetts made a factual determination that the complaints in *LeBlanc I* and *LeBlanc II* are identical in all material respects and, therefore, the second complaint is barred. There is no conflict among the Circuits as to the application of these two well-settled principles.[6]

III. THE CASE PRESENTS NO IMPORTANT OR SUBSTANTIAL QUESTION OF FEDERAL LAW

This case presents no important federal statutory issues and, in fact, does not involve the interpretation of any federal statute. It is unnecessary to reach any False Claims Act issue in order to resolve the case. The only issue is the preclusive effect of *LeBlanc I*.

The application of *res judicata* and collateral estoppel turns solely upon an analysis of the particular facts involved and a comparison of the issues decided in the first case with those presented in the second. *See, e.g., Precision Air Parts, Inc. v. Avco Corp.*, 736 F.2d 1499, 1502 (11th Cir. 1984), *cert. denied*, 469 U.S. 1191 (1985) (determination of what claims were actually litigated is a factual question subject to the clearly erroneous standard). The decision that the present complaint is barred by these doctrines can by definition only affect the Petitioner and his repeated attempts to put forth the identical claims arising out of his government employment. The factual findings made by the courts below, including the District Court's findings that the complaints were identical for all material purposes and that all of the allegations arose out of the

---

[6] Any "conflict" among the circuits regarding the circumstances in which a government employee may file a *qui tam* suit under the False Claims Act is not presented in this case.

same factual circumstances, are the sole issues.[7] The appeal, therefore, will be of no consequence to other *qui tam* litigants or to the body of law interpreting the False Claims Act.

IV. DENIAL OF THE PETITION WOULD DISCOURAGE FORUM SHOPPING

There have been no procedural errors in *LeBlanc II* and the case presents no important federal jurisdictional issues. Instead, the procedural concerns Petitioner raises with respect to the transfer of the action from the Middle District of Florida to the District of Massachusetts are simply products of Petitioner's repeated attempts to manipulate the court system and "shop" among forums for a more favorable application of the law.

Petitioner admits that he filed his complaint in the Middle District of Florida to take advantage of Eleventh Circuit precedent he deemed favorable. Petition at 11. However, 28 U.S.C. § 1404(a) was intended to prevent exactly this type of forum shopping. *Cheeseman v. Carey*, 485 F. Supp. 203, 214 (S.D.N.Y. 1980). In such circumstances, the "Court cannot find that it is in the interest of justice to encourage, or even allow, a plaintiff to select one district exclusively or primarily to obtain or avoid specific precedents, particularly in circumstances such as these where the relevant law is unsettled and the choice of forum may well dictate the outcome of the case." *Schmid Laboratories Inc. v. Hartford Acc. & Indem. Co.*, 654 F. Supp. 734, 737 (D.D.C. 1986).[8] Petitioner should not be heard to complain that his improper forum shopping efforts were unsuccessful.

---

[7] Petitioner admits that *all* of the allegations raised in *LeBlanc I* are reasserted in *LeBlanc II*. Petition at 6, 25.

[8] *See also In re Korean Air Lines Disaster*, 829 F.2d 1171, 1175 (D.C. Cir. 1987) (federal venue provisions "are designed with geographical convenience in mind, and not to 'guarantee that the plaintiff will be able to select the law that will govern the case.'") (*citing Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257 n.24 (1981)).

In addition, Petitioner mistakenly asserts that Raytheon "stipulated" to subject matter jurisdiction in Massachusetts, thereby precluding Raytheon's motion to dismiss. Petition at 18-19. As the Middle District of Florida recognized in its order granting Raytheon's motion to transfer, Petitioner's reasoning is fallacious:

> the requirement that a case [be] transferred only to a district where 'it could have been brought' should not operate to allow a plaintiff to avoid specific precedents or rulings by 'shopping' among different forums for the application of some particular view of the law. [citations omitted] Defendant's seemingly contradictory position is in reality a product [of] Plaintiff's apparent attempt to manipulate the court system through forum shopping and does not serve as grounds for preventing the transfer of this case to the appropriate forum.

App. at 54-55. Moreover, the District of Massachusetts dismissed *LeBlanc II* on the grounds of *res judicata* and collateral estoppel, not for lack of subject matter jurisdiction. Petitioner seems to argue that once a case is transferred pursuant to 28 U.S.C. § 1404(a), it can never be dismissed in the transferee court for any reason. Petition at 12-16. Even if this theory were properly before this Court — which it is not — it is without foundation and wholly unsupported.

V. OVERTURNING THE FIRST CIRCUIT DECISION WOULD UPSET THE FINALITY OF ALL FEDERAL DECISIONS

Under the doctrine of *res judicata*, "a final judgment on the merits bars the parties or their privies from relitigating issues that were or could have been raised in the first cause of action." *Dowd v. Soc'y of St. Columbans*, 861 F.2d 761, 763 (1st Cir. 1988); *see also Montana v. United States*, 440 U.S. 147, 153 (1979). *Res judicata* precludes multiple lawsuits on identical

claims between the same parties, and thereby "encourages reliance on judicial decisions, bars vexatious litigation, and frees the court for resolution of other disputes." *Brown v. Felsen*, 442 U.S. 127, 131 (1979). Overturning the dismissal based on *res judicata* and collateral estoppel would upset these long standing principles and frustrate the efficient administration of justice in our federal courts.

VI. THE DECISIONS AND PROCEEDINGS BELOW WERE ACCURATE AND FAIR

Finally, the decisions below should remain undisturbed because the District of Massachusetts and the First Circuit fully considered and correctly decided the issues in *LeBlanc II*. The well settled principles of *res judicata* and collateral estoppel clearly bar Petitioner's present action and, as the First Circuit emphatically held, the District Court properly dismissed the complaint on those grounds.

First, a Rule 12(b)(6) motion was the proper vehicle for raising the *res judicata* and collateral estoppel issues. *Diaz-Buxo v. Trias Monge*, 593 F.2d 153, 154 (1st Cir.), *cert. denied*, 444 U.S. 833 (1979); *Concordia v. Bendekovic*, 693 F.2d 1073 (11th Cir. 1982). Consideration of the prior record in this case was both appropriate and necessary. *Concordia*, 693 F.2d at 1076.

Second, *res judicata* and collateral estoppel apply to the jurisdictional issue presented and decided in *LeBlanc I*. *See Underwriters Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 706 (1982), *citing American Surety Co. v. Baldwin*, 287 U.S. 156, 166 (1932); *Hadge v. Second Fed. Sav. & Loan Ass'n of Boston*, 409 F.2d 1254, 1257 (1st Cir. 1969). As this Court has held, the district courts have the authority:

> to determine whether or not they have jurisdiction to entertain the cause and for this purpose to construe and apply the statute under which they are asked to

> act. Their determination of such questions, while open to direct review, may not be assailed collaterally.

Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371, 376 (1940).[9]

Finally, the District Court conducted a comparison of the two long and complex complaints and made a factual finding that they were identical in all material respects. All of the requirements of *res judicata* and collateral estoppel are met: a final judgment was obtained in *LeBlanc I*, the parties and causes of action were identical, and Petitioner had a full and fair opportunity to litigate his claims in both the District Court and the Court of Appeals. App. 62-63.

Moreover, as the District Court held, the *LeBlanc I* decision "is still valid and is therefore controlling in this case and binding on this Court, despite any rulings to the contrary in other circuits." App. at 63-64. The general rule is that "changes in the law after a final judgment do not prevent the application of res judicata and collateral estoppel, even though the grounds on which the decision was based are subsequently overruled." *Precision Air Parts Inc.*, 736 F.2d at 1503. As this Court has held, "a fact, question or right distinctly adjudged in the original action cannot be disputed in a subsequent action, even though the determination was reached upon an erroneous view or by an erroneous application of the law." *Montana v. United States*, 440 U.S. 147, 162 (1979) (*citing United States v. Moser*, 266 U.S. 236, 242 (1924)).

---

[9] *See also Durfee v. Duke*, 375 U.S. 106, 116 (1963) (where "jurisdictional issues had been fully and fairly litigated by the parties and finally determined in [the first court], the [second court] was correct in ruling that further inquiry was precluded").

CONCLUSION

For these reasons, respondent Raytheon Company respectfully requests that the petition for a writ of certiorari be denied.

April 30, 1993

Respectfully submitted,

Richard A. Sauber
Counsel of Record
Kenneth S. Kramer, P.C.
Douglas W. Baruch
Maureen C. Shay
FRIED, FRANK, HARRIS,
SHRIVER & JACOBSON
(A Partnership Which Includes
Professional Corporations)
1001 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20004
(202) 639-7000

Counsel for Respondent
Raytheon Company